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MAY 7, 2012, 9:20 AM POLITICS STATE POLITICS

Michigan Treasury's tax overkill



Charles Owens is the Michigan director for the National Federation of Independent Business.

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Perception is a powerful tool when it comes to a state's business climate. Making Michigan attractive for new investment — and encouraging businesses already located here to stay put — is a deliberative and dynamic process. Michigan's recent positive steps to improve its business climate are creating a positive international impression after a decade of bad press and negative perceptions.



However, a positive business climate is a fragile commodity that can quickly be diminished by the actions of a few people in pursuit of their own narrow agenda. Like a rude waitress in an otherwise outstanding restaurant, a great deal of damage is done when everyone is not working toward the greater good.

Case in point: the Michigan Department of Treasury's heavy-handed approach to enforcing corporate officer liability statutes.

In Michigan, as in most states, a corporate officer is personally liable when business taxes go unpaid. Traditionally, other states and the IRS have limited personal liability to only unpaid trust taxes. Trust taxes are those taxes that a business collects from other persons and holds in trust for the government. Consumer sales taxes and employee withholding taxes are two common examples. Holding a corporate officer personally liable for unpaid trust taxes is perfectly acceptable.

In the majority of states, personal liability statutes have required that the responsible person be employed in a tax-supervisory position with the company during the time that the person's company failed to pay the government. However, Michigan's Treasury is departing from this body of law. Treasury now extends its assessments to persons *not employed* by the tax liable entity or were not employed during the time period in which the tax was not paid. That is, the state Treasury is now assessing persons for tax debts that arose *before* the person was employed by the company. It is assessing persons that were members of other holding companies that invested in the tax liable company — and had no hand in day-to-day operations. Treasury is assessing persons for debts which arose after they left the company. No other government jurisdiction practices such an expansive assessment.

This change was noted by Forbes Magazine — warning that Michigan imposes personal liability on all business taxes and has an aggressive collection policy relative to other states. A little bad publicity like this can undo all of the hard work undertaken to change Michigan's bad boy business reputation.

Legislation to clarify who is the "responsible person" in these situations — and require Treasury to play by the rules common in most other states — is in front of the Senate Finance Committee. **Senate Bill 64**, sponsored by Senator Jack Brandenburg, is a balanced and fair approach to collecting taxes due without entangling innocent people that had nothing to do with the problem.

Lansing lawmakers would do well to get Treasury back on the reservation — and pass these important changes to keep Michigan moving in the right direction.